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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/805,686

03/19/2004

Richard J. Morris

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8616

24113

7590

04/10/2006

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EXAMINER

SLACK, NAKO N

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/805,686 $\frac{E}{\text{}} 90/007487$

Applicant(s)

MORRIS, RICHARD J.

Examiner

Naoko Slack

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/3/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/27/06, 6/9/05</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

In view of applicant's amendment received 12/22/2005, claim 21 has been canceled. Claims 1, 14-20, and 22 have been previously canceled. An examination of pending claims 2-13 is herein presented with responses to applicant's remarks.

Oath/Declaration

The oath/declaration must identify the inventor's residence and mailing address. If residence and mailing address are the same, this fact must be so stated in the declaration. A new oath/declaration is required.

Information Disclosure Statement

Applicant's information disclosure statement received January 27, 2006 has been received, and all references have been considered.

Notice of Concurrent Proceeding

Applicant's Notice of Concurrent proceeding with Attachment A received March 3, 2006 has been entered and considered.

Claim Objections

Claim 2 is objected to because of the following informalities: On the last line of claim 2, the dash in "plies-extending" appears to a typographical error. Clarification and appropriate correction is required.

Also, the comma in claim 2, line 7, must be underlined.

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-11, 13 rejected under 35 U.S.C. 102(b) as being clearly anticipated by US Patent 5304095 to Morris.

Claim 2:

Morris discloses a roof system comprising an overlay of plywood (22) and shingles (24), a top panel (62), and a batten (12, 14) disposable between the panel and overlays, the batten comprising generally planar first plies (30, 32) and a second ply (34), the first and second plies cooperating to define a multiplicity of passages extending generally transversely to a longitudinal axis of the batten, and in which the second ply includes a multiplicity of cross plies (sides of troughs) extending between the first plies.

Applicant argues that “the teachings of Morris are limited to a shingle roof system” (page 4) and states that applicant’s invention is directed to a tile roof system. However, Morris clearly states that the roof ventilators “...are overlaid with shingles, tar paper, tile, or other roofing materials” (Morris ‘095, column 1, lines 41-43).

Claim 3:

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Morris discloses a roof system comprising an overlays of plywood (22) and shingles (24), a top panel (62), and a batten (12, 14) disposable between the panel and overlays, the batten comprising generally planar first plies (30, 32) and a second ply (34), the first and second plies cooperating to define a multiplicity of passages extending generally transversely to a longitudinal axis of the batten, and in which the second ply is generally convoluted (Figure 9). Morris states that the roof ventilators "...are overlaid with shingles, tar paper, tile, or other roofing materials" (Morris '095, column 1, lines 41-43).

Claims 4 and 5:

A plurality of first plies and plurality of layers are present (Figure 8).

Claim 6:

Adjacent layers are hingedly connected by a hinge line (48, Figure 8) extending generally parallel to the batten longitudinal axis.

Claim 7:

The hinge line is defined by a slice extending through the second ply and one of the first plies (as best shown in Figure 8).

Claims 8 and 9:

Figure 2 discloses first and second hinge lines (48 on the right longitudinal edge and on the left longitudinal edge, the ventilator in folded position). As best shown in Figure 8, the hinge line on each side is defined by a slice extending through another of the first plies and the second ply. One first ply is intact (62, Figure 8).

Claims 10, 11, 13:

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The layers are stacked and fastened together with fastening means such as staples (38, Figure 5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5304095 to Morris in view of US Patent 2,042,586 to Campbell et al. and applicant's disclosure.

Morris discloses that the ply layers are stacked and fastened together using a plurality of "fasteners 38 such as staples" (column 3, lines 13-16). Morris does not specify stitching to fasten the layers; however, stitching is a well-known functional equivalent of staples for the purpose of fastening stacked layers. For example, Campbell et al. discloses a building article comprising a plurality of stacked layers (Figure 2) which are "sewn or stapled together" (page 1, lines 29-32) for improved stiffness (page 2, lines 10-12). Because the layers may be "sewn or stapled together", one of ordinary skill in the art at the time the invention was made would consider stitching to be a functional equivalent of stapling for the purpose of fastening together a plurality of layers.

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Furthermore, applicant has not disclosed the criticality of "stitching" the layers together as opposed to "stapling" the layers together. In fact, applicant's disclosure states that the layers are stacked and fixed to each other by stitching but that other fastening means may be used such as "staples" (column 3, lines 6-11, applicant's US Patent 6,357,193).

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naoko Slack whose current telephone number is 571-272-6848. The examiner can normally be reached on Mon-Fri (6:00 am-2:30pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Naoko Slack
Primary Examiner
Art Unit 3635

NS
March 31, 2006